

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10991-NG

KENNETH M. WHITE and)
MANDY DIAS,)
)
Plaintiffs)
)
vs.)
)
ERIC MADONNA and CITY OF)
FALL RIVER,)
)
Defendants)

DEFENDANT'S MOTION IN LIMINE

Defendants Eric Madonna and the City of Fall River, by their attorney, move in limine to exclude from evidence the plaintiff's following proposed exhibit:

2. Records of individual citizen complaints filed against Eric Madonna with the Fall River Police Department between 1997 and 2002.

In support of this motion, defendants submit the accompanying Memorandum In Support.

Respectfully Submitted,
Eric Madonna and
The City of Fall River
By their Attorney,

Gary P. Howayeck, Esq.
1 Government Center
Fall River, MA 02720
BBO# 630053
(508) 676-6666 Phone
(508) 674-3610 Fax

November 20, 2007

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10991-NG

KENNETH M. WHITE and)
MANDY DIAS,)
Plaintiffs)
)
vs.)
)
ERIC MADONNA and CITY OF)
FALL RIVER,)
Defendants)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S
MOTION IN LIMINE

Defendants submit this memorandum in support of their motion to bar plaintiffs Kenneth M. White and Mandy Dias from making any presentation or reference to the jury regarding proposed Exhibit 2. Records of individual citizen complaints filed against Eric Madonna with the Fall River Police Department between 1997 and 2002. The basis of this motion is Federal Rules of Evidence 403, 404(a) & (b) and 801.

Defendants anticipate that the plaintiffs Kenneth M. White and Mandy Dias will offer evidence regarding records of individual citizen complaints filed against Eric Madonna with the Fall River Police Department. See Joint Pre-Trial Memorandum, section on Plaintiff's Exhibits. This information is wholly irrelevant to any of the issues to be determined in the trial before the jury.

The grounds for exclusion of the said evidence are as follows:

1. The defendants anticipate that the records will be used as character evidence against the defendant Eric Madonna which is barred under Fed. R. Evid. 404

and further that the said evidence is unfairly prejudicial under Fed. R. Evid. 403.

- a. The use of the proposed records for the purpose of asserting that the defendant acted in conformity with his alleged character on a particular occasion is not allowed under Fed. R. Evid. 404(a) and (b). Particularly, even if such type of character evidence would be admissible it must be in the form of opinion or reputation as defined in Fed. R. Evid. 405 not in the form of specific instances as the plaintiffs are attempting to do with admission of this evidence.
 - b. Further, the defendants take the position that the risk of unfair prejudice outweighs the probative value that this evidence provides. All of the citizen complaints requested reached a resolution of unfounded or not sustained. To allow the plaintiffs to testify as to the particular instances would be unfairly prejudicial, creating in the minds of the jury a picture of the defendant that is untrue and unfounded.
2. The defendants also take the position that the evidence is hearsay as defined by Fed. R. Evid. 801 to which there is no exception.
 - a. The citizen complaint reports are written statements made by declarants who are not involved in this litigation. It is clear that the plaintiffs are attempting prove some truth in the assertions made by these outside declarants, making the statements in the reports hearsay. Further, it is clear from the proposed witness list that the plaintiffs do not intent to call any of these declarants as witnesses at this trial,

making them unavailable for cross-examination and therefore inadmissible.

- b. The defendants would also like to point out that if the court should conclude these reports to be business or public records under Fed. R. Evid. 803(6) or (10) that the statements made within these complaints are in themselves hearsay for the reasons stated above and not admissible.

- 3. To that extent they are offered 'solely' against the City of Fall River to show prior knowledge or pattern they are still prohibited by the Rules of Evidence.

- a. Any evidence of prior complaints will prejudice individual Madonna as noted above.
- b. Such evidence is not admissible for a whole host of reasons that I would reserve further for oral hearing.

In view of the irrelevancy of this information and the prejudice to the defendants that would result if it were presented to the jury, defendants submit that this motion be granted and that plaintiffs Kenneth M. White and Mandy Dias be barred from raising in front of the jury any evidence regarding records of individual citizen complaints filed against Eric Madonna with the Fall River Police Department between 1997 and 2002.

Respectfully Submitted,
Eric Madonna and
The City of Fall River
By their Attorney,

Gary P. Howayeck, Esq.

1 Government Center
Fall River, MA 02720
BBO# 630053
(508) 676-6666 Phone
(508) 674-3610 Fax

November 20, 2007